

## Update: Domestic Violence Benchbook (3rd ed)

### CHAPTER 5

#### Evidence in Criminal Domestic Violence Cases

##### 5.12 Evidence of Other Crimes, Wrongs, or Acts Under MRE 404(b)

###### A. Admissibility of Evidence Under MRE 404(b)

Effective March 24, 2006, 2006 PA 78 enacted a statute authorizing the admission of evidence regarding a defendant's other acts of domestic violence. Insert the following text immediately after the January 2006 update to subsection (A) on page 228:

Evidence that a defendant committed other acts of domestic violence is admissible in a criminal action against a defendant accused of committing an offense involving domestic violence. MCL 768.27b.\* If admissible, such evidence may be introduced “for any purpose for which it is relevant, if it is not otherwise excluded under Michigan rule of evidence 403.” MCL 768.27b(1). The statutory provisions of MCL 768.27b “do[] not limit or preclude the admission or consideration of evidence under any other statute, rule of evidence, or case law.” MCL 768.27b(3).

MCL 768.27b contains a temporal requirement. “Evidence of an act occurring more than 10 years before the charged offense is inadmissible under this section, unless the court determines that admitting this evidence is in the interest of justice.” MCL 768.27b(4).

MCL 768.27b(5) defines the term “domestic violence” for purposes of this statute as “an occurrence of 1 or more of the following acts by a person that is not an act of self-defense:

- (i) Causing or attempting to cause physical or mental harm to a family or household member.

\*Applicable to trials and evidentiary hearings started or in progress on or after May 1, 2006.

(ii) Placing a family or household member in fear of physical or mental harm.

(iii) Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.

(iv) Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.” MCL 768.27b(5)(a).

“Family or household member” is defined in MCL 768.27b(5)(b) to mean any of the following:

“(i) A spouse or former spouse.

“(ii) An individual with whom the person resides or has resided.

“(iii) An individual with whom the person has or has had a child in common.

“(iv) An individual with whom the person has or has had a dating relationship. As used in this subparagraph, ‘dating relationship’ means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.”

## **B. Procedure for Determining the Admissibility of Evidence of Other Crimes, Wrongs, or Acts; Limiting Instructions**

Newly enacted MCL 768.27b also contains a notice requirement. Insert the following text after the January 2006 update to subsection (B) on page 229:

MCL 768.27b, which governs the admissibility in criminal cases of evidence of other acts of domestic violence committed by a defendant, also contains a notice requirement. MCL 768.27b(2) requires the prosecuting attorney to disclose evidence admissible under this statute, “including the statements of witnesses or a summary of the substance of any testimony that is expected to be offered, to the defendant not less than 15 days before the scheduled date of trial or at a later time as allowed by the court for good cause shown.”

## CHAPTER 5

### Evidence in Criminal Domestic Violence Cases

#### 5.13 Testimonial Evidence of Threats Against a Crime Victim or a Witness to a Crime

##### C. Statutory Authority for the Admission of Threat Evidence in Cases Involving Domestic Violence

Effective March 24, 2006, and applicable to trials and evidentiary hearings started or in progress on or after May 1, 2006, a declarant's statements are admissible under specific circumstances in criminal cases involving domestic violence. 2006 PA 79. At the end of Chapter 5 on page 243, add a new subsection as indicated above and insert the following text:

MCL 768.27c establishes a new exception to the hearsay rule for statements purporting to narrate, describe, or explain the infliction or threat of physical injury upon the declarant. This exception applies only to offenses involving domestic violence. A declarant's statement may be admitted under MCL 768.27c if all of the following circumstances exist:

“(a) The statement purports to narrate, describe, or explain the infliction or threat of physical injury upon the declarant.

“(b) The action in which the evidence is offered under this section is an offense involving domestic violence.

“(c) The statement was made at or near the time of the infliction or threat of physical injury. Evidence of a statement made more than 5 years before the filing of the current action or proceeding is inadmissible under this section.

“(d) The statement was made under circumstances that would indicate the statement's trustworthiness.

“(e) The statement was made to a law enforcement officer.” MCL 768.27c(1).

For purposes of subsection (1)(d) of MCL 768.27c, “circumstances relevant to the issue of trustworthiness include, but are not limited to, all of the following:

(a) Whether the statement was made in contemplation of pending or anticipated litigation in which the declarant was interested.

(b) Whether the declarant has a bias or motive for fabricating the statement, and the extent of any bias or motive.

(c) Whether the statement is corroborated by evidence other than statements that are admissible only under this section.” MCL 768.27c(2).

For purposes of MCL 768.27c, the term “domestic violence” means “an occurrence of 1 or more of the following acts by a person that is not an act of self-defense:

(i) Causing or attempting to cause physical or mental harm to a family or household member.

(ii) Placing a family or household member in fear of physical or mental harm.

(iii) Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.

(iv) Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.” MCL 768.27c(5)(b).

“Family or household member” is defined in MCL 768.27c(5)(c) to mean any of the following:

“(i) A spouse or former spouse.

“(ii) An individual with whom the person resides or has resided.

“(iii) An individual with whom the person has or has had a child in common.

“(iv) An individual with whom the person has or has had a dating relationship. As used in this subparagraph, ‘dating relationship’ means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.”

MCL 768.27c also contains a notice requirement. MCL 768.27c(3) requires the prosecuting attorney to disclose evidence admissible under the statute, “including the statements of witnesses or a summary of the substance of any testimony that is expected to be offered, to the defendant not less than 15 days before the scheduled date of trial or at a later time as allowed by the court for good cause shown.”

## **CHAPTER 10**

### **Case Management for Safety in Domestic Relations Cases**

#### **10.4 Confidentiality of Records Identifying the Whereabouts of Abused Individuals**

##### **A. Confidentiality in Friend of the Court Records Generally**

Delete the November 2005 update to page 435. In an order dated March 29, 2006, the Supreme Court reversed the Court of Appeals and remanded the case to that Court for further proceedings. *UAW v Dorsey*, 474 Mich 1097 (2006).